IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 4641 OF 2005

The State of Maharashtra and Ors. ... Petitioners

Versus

Shri. Umakant Shivaji Nalawade ... Respondents

WITH

WRIT PETITION NO 4661 OF 2005

The State of Maharashtra and Ors. ... Petitioners

Versus

Shri. Kailas R. Patil and anr. ... Respondents

Mr. V.P. Malvankar, A.G.P. for Petitioners.

Mr. N.V. Bandivadekar for Respondent No. 1.

CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATED : 6TH SEPTEMBER, 2005

P.C.

. Rule. Heard forthwith.

. Respondent No. 1 in both the petitions were appointed as Clerk cum typist. The appointment was within the district of Mumbai which required that even in respect of appointment to the post of Clerk cum typist, recruitment has to be done through M.P.S.C. The respondents were appointed against the post reserved for project affected persons. Their services came to be terminated on the ground that their appointments were not in consultation with the Maharashtra Public Service Commission.

. The Petitioners being aggrieved, preferred Original Application before the Maharashtra Administrative Tribunal. Both the Original Applications were disposed of by common order dated

8.4.2005. Statement made by Special Counsel on behalf of the Petitioners was recorded which reads as under :

> "The learned special counsel and learned C.P.O. on instructions, state that the State Government shall try to accommodate the applicants in any suitable vacancy anywhere in the State. But such appointment has to be treated as fresh appointment for all purposes."

. Considering the said statement, after going through the impugned order, the learned tribunal was pleased to issue various directions including that both the respondents be given fresh appointments as clerk cum typist in any available vacancy anywhere in the state within two months from the date of the order. The Petitioners were also directed to exempt the applicants from appearing for any departmental examination as they might have already undergone the examination during their temporary appointment. Thirdly the petitioners were directed to release annual increments to the applications for the period from which they have worked and pay arrears within four months from today.

. It is this order which is subject matter of the present petition. We have heard the learned counsel for the parties and considered the impugned order. As reproduced earlier, the petitioners themselves had made a concession through their counsel before the learned tribunal that they would accommodate respondents in any vacancy against suitable vacancy anywhere in State. We see no reason as to why the petitioners should be allowed not to comply with the said statement made before the learned tribunal. Even otherwise, there is no dispute that the respondents are project affected persons. The posts were reserved for the project affected persons. It is only procedural aspect of selection that is consultation of M.P.S.C. which was not followed. The requirement of consultation for the post of clerk-cum-typist with M.P.S.C. is only in the District of Mumbai and no such consultation is required outside the District.

. Considering the above and even otherwise, nothing has been brought to our notice that the respondents are unfit to hold the post of clerk cum typist, we see no reason as to why we should interfere with the impugned order. The order otherwise, does not suffer from any error apparent.

On behalf of the respondents, their learned counsel on instructions state that in so far as direction to release annual increments to the respondents for the period for which they have worked and arrears thereof, are not being pressed.

. In the light of that, petition made partly absolute to the extent that direction No. 3 of the impugned order is set aside. This is subject to the condition that the petitioner issue letter of appointment and post respondents in any suitable vacancy as clerk cum typist within the period of eight weeks from today. If no appointment is made within the time stipulated the Respondents will be entitled to claim increment and arrears in terms of the order of M.A.T. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)